

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000157

12/17/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

B DON TAYLOR

v.

GERALD MENARD

ROBERT ARENTZ

FINANCIAL SERVICES-CCC  
PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8955147

Charge: ASSAULT

DOB: 06/02/47

DOC: 12/22/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on November 18, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the arguments of counsel, the record from the Phoenix City Court, and the Memoranda submitted.

Appellant, Gerald Menard, was charged in the Phoenix City Court with Assault, a class 1 misdemeanor, in violation of A.R.S. Section 13-1203(A)(1). The victim of the crime was Gerald  
Docket Code 513

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Fosdick, who was 73 years old at the time of the crime; Appellant was 53 years of age. Appellant was found guilty after a trial to the court. On March 25, 2002, the Honorable Patricia Whitehead (Phoenix City Court judge) sentenced Appellant to serve 180 days in jail, pay a fine of \$4,425.00 to the Clerk of the Phoenix Court, but ordered that the fine would be completely suspended when Appellant successfully completed a substance abuse program.<sup>1</sup> The trial judge also ordered Appellant to pay \$393.39 restitution to Gerald Fosdick. Appellant has filed a timely Notice of Appeal in this case and challenges the sentence imposed by the Phoenix City Court.

First, Appellant contends that the trial judge improperly considered previous arrests of Appellant that did not result in convictions. Appellant points out that these arrests were referenced in the prosecutor's sentencing memorandum, and discussed within the memorandum itself. However, the record does not support Appellant's contention that the trial judge relied upon these arrests in determining the sentence in this case. The record reflects that this court's presumption that the trial judge knows the law and follows the law in sentencing, is not misplaced.<sup>2</sup> This Court finds that the trial judge understood that mere arrests could not be used to aggravate a criminal sentence.<sup>3</sup>

The record demonstrates the reasons for the trial judge's sentence in this case. Those facts clearly support a maximum sentence:

Certainly Mr. Menard has had some terrible things happen in his life and suffered traumas, as his wife has. If you live long enough, it happens to all of us. Three tours in Vietnam is a lot.

And Mr. Fosdick, I think was probably, oh, exercising authority that maybe he didn't have, maybe being a little bit officious, and I certainly think he called Mr. Menard's mother a name, which is enough to set off a lot of people, especially people who were raised in the southern part of the country where manners and respect for elders is cherished. ...

Some people, three beers is enough to set them off. And the only thing I don't understand about this case is why it wasn't filed as a felony. Victim's 73 years old. Defendant, who is obviously in good shape, whether he has back problems or not he is obviously in good shape. He's 54. And Mr. Menard lost it. And this was brutal, absolutely brutal. I've seen the pictures, I've heard the tapes, I've listened to everybody, and it is more

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<sup>1</sup> R.T. of March 25, 2002, at pages 169-170.

<sup>2</sup> See, State v. Medrano, 185 Ariz. 192, 914 P.2d 225 (1996).

<sup>3</sup> State v. Romero, 173 Ariz. 242, 841 P.2d 1050 (App. 1992).

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than (a) regrettable incident (emphasis added).<sup>4</sup>

Appellant also contends that the trial judge improperly sentenced him to the maximum sentence and the maximum period of probation. However, Appellant's sentence is entirely within the statutory parameters outlined in A.R.S. Section 13-707(A). Given the severity and brutality of the beating that Appellant inflicted upon a 73 year old man, the Court finds no error in the trial court's imposition of a maximum sentence.

Finding no other errors,

IT IS ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix City Court in this case.

IT IS FURTHER ORDERD remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

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<sup>4</sup> Id., at pages 167-169.  
Docket Code 513